IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 727 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

G S R T C

Versus

P C CHAUHAN

Appearance:

MR HARDIK C RAWAL for Petitioner.

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 13/02/2002

ORAL JUDGEMENT

The petitioner-Corporation has filed this petition under Article 227 of the Constitution of India challenging the award passed by the Labour Court, Vadodara in Reference No. 907 of 1986 on 5-7-1990, whereby the respondent-workman serving as a Driver in petitioner-Corporation was ordered to be reinstated without backwages. The petitioner has prayed for quashing and setting aside the award and has also prayed for stay against the execution and operation of the

impugned award. This Court has issued the notice on the respondent on 23-10-1991 only with regard to imposition of additional penalty making it returnable on 3-12-1991. The Rule was issued on 3rd December 1991, however no stay was granted by this Court against the execution and operation of the impugned award.

2. I have heard Mr. Hardik C. Rawal, learned advocate appearing for the petitioner. Fresh notice issued by this Court on 29-5-2000 was served on the respondent on 9-6-2000. It is the case of the petitioner that the respondent-workman remained unauthorisedly absent from 29th November 1984 to 8th January 1985. The respondent was therefore served with the chargesheet dated 22nd January 1985. It is further stated in the petition that during the course of the inquiry the respondent had neither participated in the hearing nor he had discharged his duties as a driver. It has come out from the inquiry proceedings that the respondent had left for abroad and was serving in Saudi Arabia. The respondent was therefore dismissed from service with effect from 11th February 1985.

3. The respondent has challenged this order of dismissal before the Labour Court, Vadodara, in Reference No. 9067 of 1986, and the Labour Court, vide its order dated 5th July 1990 directed the petitioner to reinstate him without backwages.

4. The said award of the Labour Court is under challenge in this petition before this Court. On behalf of the petitioner, it is contended before me that the award passed by the Labour Court suffers from serious errors of law and facts and requires to be set aside. It is further contended that the Labour Court was not justified in exercising power under Section 11-A of the Industrial Disputes Act. It is further contended that the fact that the respondent had gone abroad was established by letter received from the father of the respondent-workman. This fact was not disclosed by the respondent at the time when the leave report was submitted by the respondent. It is further contended that because of the absence of the respondent the petitioner-Corporation was to make an arrangement. My attention was also drawn to the past record of the respondent wherein several instances of misconduct were pointed out and the respondent was found to be guilty of negligence etc. It is further submitted that since the petitioner being a public Corporation it is very difficult for it to run the administration and render public services especially when the workman was at abroad

unauthorisedly with intention to settle out of India. On the basis of these pleadings and contentions urged in the petition as well as at the time of hearing of this petition, the learned Advocate has prayed for a suitable order or direction being passed and/or given. Mr. Raval, the learned advocate has further drawn my attention to judgment of Division Bench of this Court in the case of Maganbhai L. Chauhan Vs. Divisional Controller, GSRTC, reported in 1999(1) G.L.H. 527, which case was also a case of driver and his services were terminated on the ground of wilful absence in duty. In this context, the Division Bench has held as under;

"It is required to be noted that looking to the nature of service, if the appellant was not on duty, GSRTC was unable to operate bus in charge of the appellant on a route in the absence of the appellant, a Conductor. It was also found that in the past also, he used to remain absent and schedule was required to be cancalled for which a small amount of fine was imposed which was recovered from his salary. Learned single Judge, on going through the award found that it is a case of wilful absence which amounts to misconduct. When the Medical certificate indicates vaguely that he was suffering from abdominal pain and fever without giving any details and that too after the notice was given to him, the authorities did not accept the same more particularly as there was a correction in the date. The authorities found that the medical certificate is not reliable. The Labour Court was required to assign reason while interfering with the findings of the Disciplinary Authority including that of punishment. Before the Inquiry Officer, opportunity was given to the appellant to examine witnesses. The appellant could have examined the Doctor to prove that he was sick. If the certificate was accepted by the authority on presentation, then there was no question of holding an inquiry. Inquiry was held because the certificate was not accepted by the authorities, and therefore, it was the duty of the appellant to examine the Doctor with a view to prove that he was in fact sick. At this stage, it is required to be noted that the Inquiry Officer's report clearly indicates that the appellant was found remaining absent on number of occasions and the same has been accepted by the Labour Court. The Labour Court has specifically observed, after referring to various incidents for remaining absent without leave that "this workman has a

habit of remaining absent without previous leave; in case if he was sick, he does not care to convey the same to the employer; the GSRTC is for public services; if an employee does not join duty, bus service is likely to be affected on a particular route; thus, on such responsible position if an employee remains absent without prior information, cannot be tolerated. The said act amounts to misconduct as per the Rules." Labour Court, considering the past record also recorded a finding that on 14 occasions, the workman remained absent without leave. (Para 3).

Despite this finding, without assigning any reasons, the presiding officer of the Labour Court in one sentence stated that as medical certificate is produced, benefit of doubt should go to the appellant. It is not correct approach, more particularly when the certificate is doubted. If the certificate would have been issued by the Doctor of the Corporation itself, then the matter could have been different. However as the certificate is not accepted and the defence is that the employee could not remain present because of sickness, then at least by examining the Doctor he could have proved the certificate to show that he was sick to such an extent that he was unable to attend his duties. The Labour Court also held that the concerned workman must be punished, and thereafter, without assigning any reason, the Labour Court held that it would be just and proper to reinstate the workman with 50% backwages. (Para 5).

The Labour Court, while interfering with the order of termination passed by the employer and substituting it with reinstatement with 50% backwages, was required to give reasons, which are acceptable, it is required to be noted that the Apex Court in the case of Workmen v. Firestone Tyre & Rubber Co., reported in 1973 (1) SCC 813 held that if the Court gives a different finding from that of the Inquiry Officer, then the Court should give cogent reasons for deferring from the finding of Inquiry Officer. Learned single Judge, in view of the aforesaid circumstances held that the order passed by the Labour Court being not in accordance with law, must be quashed and set aside." (Para 6).

5. On the basis of the aforesaid judgment and the

ratio laid down therein, Mr.Raval, learned advocate for the petitioner has urged that the order passed by the Labour Court should be quashed and set aside and that the order of dismissal be confirmed.

6. It is very unfortunate that the respondent-workman, though duly served, did not choose to remain present at the time of final hearing of this petition. Though the trial Court has accepted the fact that the charge levelled against the workman is proved, the quantum of punishment, i.e., dismissal from service was on the higher side and keeping this fact in mind the trial Court has passed the order of reinstatement without backwages and held that the respondent was deprived of his salary during the period of his absence and even during the pendency of the proceeding before the trial Court, this fact itself amount to punishment and on that count no amount on account of backwages was awarded by the trial Court.

7. In the case cited before me and relied upon by the learned advocate, the order of dismissal was confirmed by the Labour Court and by the learned Single Judge of this Court in the appeal filed against the order of the learned Single Judge was also dismissed by the Division Bench. It is, however, found from the facts of that case that the workman in that case remained absent on 14 occasions without leave. In the present case, the workman was not found to be guilty on that count. Secondly, it is observed by the Division Bench that once having held by the lower Court that the workman be punished, without assigning any reasons, the Labour Court held that it would be just and proper to reinstate the workman with 50% backwages. The Division Bench has further referred to the decision of the Apex Court in the case of Workman v. Firestone Type and Rubber Co., - 1973 (1) SCC 813, wherein it was held that if the Court gives a different finding than that of the Inquiry Officer then the Court should give cogent reasons for differring from the finding of the Inquiry Officer. Since there was no reason given by the Labour Court in its award, this Court has quashed and set aside that order. Here, in the present case, the Labour Court has passed the order of reinstatement without any backwages and reasons were given for arriving at that finding or conclusion. The Labour Court has in terms held that the order of dismissal would amount to economic death of the workman and that would create number of complications for the maintenance as well as the education of the children and that because of the misconduct committed by the workman the entire family would have to suffer. The dismissal

order is too harsh looking to the misconduct committed by the workman. I find, therefore, sufficient substance in the reasoning given by the Labour Court for making an order of reinstatement of the workman. It is stated by Mr. Rawal that the workman is at present in the employment of the petitioner-Corporation as no stay was granted by this Court at the time of admission of this petition. Having regard to the facts and circumstances of the case, it would not be just and proper to disturb the order of reinstatement passed by the Labour Court on 5-7-1990. However, the respondent should not go scot-free looking to the misconduct committed by him. Non-awarding of backwages does not amount to punishment, as in the present case, it is found that the respondent had gone to Saudi Arabia for job purposes and he might have earned there during that period. Having regard to these peculiar facts of the case, I am of the view that the interest of justice would properly be served if the punishment of stoppage of three increments with future cumulative effect be imposed on the respondent. I accordingly, direct the petitioner to stop three increments of the respondent with future cumulative effect. The Labour Court award is modified to the above extent and the petition is accordingly disposed of with no order as to costs.

rmr. [K.A. Puj, J.]